

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

MCI, INC. )

DOCKET NO. 05-0246

For Grant of the Authority )  
Necessary for the Transfer of )  
Assets of MCI Network Services, )  
Inc. to MCI Communications )  
Services, Inc. )  
\_\_\_\_\_ )

DECISION AND ORDER NO. 22202

Filed December 29, 2005

At 10 o'clock A.M.

Brooke K. Kane

for Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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BROOKE K. KANE  
Administrative Director  
Public Utilities Commission  
State of Hawaii

Brooke K. Kane

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Necessary for the Transfer of	)
Assets of MCI Network Services,	)
Inc. to MCI Communications	)
Services, Inc.	)
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DECISION AND ORDER

By this Decision and Order, the commission approves:

(1) the transfer of certain MCI Network Services, Inc.'s ("MCI Network") telecommunications assets to MCI Communications Services, Inc. ("MCI Communications"); and (2) the expansion of MCI Communications' certificate of authority ("COA") to allow it to provide facilities-based telecommunications services in the State of Hawaii ("State"), as requested by MCI, INC. ("Applicant").

I.

Background

Applicant is a Delaware corporation with its principal offices located in Ashburn, Virginia. Applicant provides international and domestic interstate, intrastate, and local telecommunications services through its various subsidiaries. While Applicant is the parent of various operating subsidiaries, including MCI Network and MCI Communications, it does not provide

direct services to the public nor does it hold any COAs issued by the commission.

MCI Network is a Delaware corporation with its principal place of business in Ashburn, Virginia. MCI Network, formerly known as, MCI WorldCom Network Services, Inc. (formerly known as, MCI Telecommunications Corporation),<sup>1</sup> received its certificate to provide telecommunications services in the State in Decision and Order No. 13780, filed on February 22, 1995, in Docket No. 94-0231 ("Decision and Order No. 13780").<sup>2</sup> MCI Network provides wholesale long distance telephone, data, and Internet services to other telecommunications carriers, and owns facilities used to provide non-local services.

MCI Communications is a Delaware corporation with its principal offices also located in Ashburn, Virginia. MCI Communications, formerly known as MCI WorldCom Communications, Inc. (formerly known as, WorldCom Technologies, Inc.)<sup>3</sup> received commission authority to provide resold telecommunications services in the State through Decision and Order No. 16006, filed

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<sup>1</sup>See In re MCI WorldCom, Inc., et al., Docket No. 99-0164, Decision and Order No. 17103, filed on August 5, 1999 ("Docket No. 99-0164") at 1-2; Letter dated July 14, 2005, from Leigh Ann Cox, on behalf of MCI, Inc., to the commission.

<sup>2</sup>Initially, MCI Network's COA (formerly referred to as a certificate of public convenience and necessity ("CPCN")) was limited to the provision of intrastate add-on services to its interstate services. See Decision and Order No. 13780 at 10. In 1998, the commission lifted the add-on services limitation on MCI Network's COA. See In re MCI Telecommunications Corporation, Docket No. 97-0412, Decision and Order No. 16147, filed on January 5, 1998.

<sup>3</sup>See Docket No. 99-0164 at 1-2; Letter dated July 14, 2005, from Leigh Ann Cox, on behalf of MCI, Inc., to the commission.

on October 9, 1997, in Docket No. 97-0206 ("Docket No. 97-0206").<sup>4</sup> MCI Communications serves as Applicant's primary subsidiary for U.S.-based sales contracts, and holds customer contracts for commercial, wholesale, consumer, and the public sector; and leases various facilities to provide its services. MCI Communications also provides long distance services to Applicant's retail and business customers throughout all fifty (50) states and the District of Columbia.

A.

Application

On September 29, 2005, Applicant filed an application on behalf of its subsidiaries, MCI Network and MCI Communications, for approval to: (1) transfer certain telecommunications assets of MCI Network to MCI Communications ("Proposed Transfer"); and (2) expand MCI Communications' existing COA to authorize it to provide telecommunications services in the State as a facilities-based carrier to enable MCI Communications to provide services currently being provided by MCI Network ("COA Expansion") (collectively, the "Application"). Applicant makes its requests pursuant to Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules ("HAR")

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<sup>4</sup>The commission authorized the reorganization of MCI Communications and its various affiliates, including the merger of MFS Intelenet of Hawaii, Inc. ("MFS Intelenet") into its parent MCI Communications, with MCI Communications emerging as the surviving corporation, and the "transfer" of MFS Intelenet's COA to provide telecommunications services on a resold basis to MCI Communications. See Docket No. 97-0206; see also In re MFS Intelenet of Hawaii, Inc., Docket No. 95-0030, Decision and Order No. 14841, filed on August 5, 1996.

§§ 6-61-74, 6-61-105, and 6-80-135.<sup>5</sup> To the extent that its Application does not satisfy the filing requirements of HAR § 6-61-105, Applicant requests that those requirements be waived.

With respect to the Proposed Transfer, Applicant represents that it is part of its "effort to streamline its corporate structure, achieve cost savings[,] and eliminate any administrative duplication."<sup>6</sup> It states that the Proposed Transfer will result in MCI Network's assets, facilities, and wholesale customer contracts involving long distance telephone, data, and Internet services being transferred to MCI Communications. After consummation of the Proposed Transfer, Applicant represents that: (1) all of MCI Network's customers will be served by MCI Communications; (2) Applicant will continue to be MCI Network's and MCI Communications' parent; and (3) there will be no transfer of MCI Network's COA.<sup>7</sup> Applicant also represents that Hawaii customers will not be adversely impacted and that there will be no changes in rates, terms, conditions, or service offerings, and that the Proposed Transfer will be transparent to all customers.

Regarding its COA Expansion request, Applicant states that MCI Communications is Applicant's operating subsidiary and, thus, MCI Communications possesses sufficient technical,

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<sup>5</sup>Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an *ex officio* party to this docket pursuant to HRS § 269-51 and HAR § 6-61-62.

<sup>6</sup>See Application at 1.

<sup>7</sup>Applicant states that MCI Network will retain its COA and that it is not seeking a cancellation of MCI Network's authority at this time.

financial, and managerial resources and abilities to provide the expanded service for all services currently being offered by MCI Network. Applicant contends that the "same management team, support personnel, and technicians who have a proven track record of successfully managing MCI Network['s . . .] facilities will continue to manage those facilities after they are transferred to MCI Communications[.]"<sup>8</sup> Moreover, Applicant states that MCI Communications is fit, willing, and able to properly perform the same services currently being provided by MCI Network.

B.

Consumer Advocate's Position

On October 24, 2005, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to approval of the Proposed Transfer or the COA Expansion ("Consumer Advocate's Statement of Position").

With regard to the Proposed Transfer, the Consumer Advocate states that its decision is based on, in part, its recognition that MCI Network and MCI Communications are both subsidiaries of Applicant and, thus, "[t]he transfer of assets between these related subsidiaries for the provision of the same services to the same customer group should have no market share impact that would negatively affect the competitive telecommunications environment in Hawaii."<sup>9</sup> Additionally, upon review of the 2004 Annual Reports filed with the commission, the

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<sup>8</sup>See Application at 5.

<sup>9</sup>See Consumer Advocate's Statement of Position at 3-4.

Consumer Advocate finds that both MCI Network and MCI Communications are non-dominant carriers in the State. Moreover, if there are any adverse consequences from the Proposed Transfer, the Consumer Advocate contends that MCI Communications' customers will have the option of selecting another telecommunications carrier since there are many carriers providing services in Hawaii's telecommunications market.

With regard to the expansion of MCI Communications' COA, the Consumer Advocate states that as a current operating and revenue generating telecommunications entity, MCI Communications has sufficient technical, financial, and managerial fitness to provide the expanded services. Moreover, the Consumer Advocate contends that MCI Communications' ability to provide the expanded services is confirmed since the same management team, support personnel, and technicians currently managing MCI Network's facilities will be transferred to MCI Communications as a result of the Proposed Transfer.

Nonetheless, the Consumer Advocate recommends that MCI Network be required to notify its customers of the proposed change in service provider resulting from the Proposed Transfer, pursuant to HAR § 6-90-129. Notification, the Consumer Advocate contends, will provide MCI Network's wholesale contract customers with an opportunity to determine whether they wish to continue receiving service from MCI Communications and will provide written confirmation to that effect.

II.

Discussion

A.

Proposed Transfer

HRS § 269-19 states:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added). The purpose of HRS § 269-19 is to safeguard the public interest.<sup>10</sup>

The commission may waive regulatory requirements applicable to telecommunications providers "when it determines that competition will serve the same purpose as public interest regulation." HRS § 269-16.9(e). Similarly, HAR § 6-80-135 allows the commission to grant an exemption from or waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions related to HRS § 269-34), upon a determination that an exemption or waiver is in the public interest.

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<sup>10</sup>See In re Honolulu Rapid Transit Co., 54 Haw. 402, 409, 507 P.2d 755, 759 (1973).



Having reviewed the record of this docket, the commission finds the Proposed Transfer to be reasonable and in the public interest. The commission's decision regarding this matter is based on, among other matters, Applicant's representation that the Proposed Transfer: (1) will not negatively affect the provision of telecommunications services in the State; (2) will not impact tariff rates, terms, conditions, or service offerings; and (3) will be transparent to all of its Hawaii customers. The commission recognizes, as Applicant contends, that the Proposed Transfer supports Applicant's efforts to streamline its corporate structure through which Applicant should obtain greater efficiencies and cost savings. Additionally, as the Consumer Advocate points out: (1) since the Proposed Transfer is between related entities for the provision of the same services to the same customers, the Proposed Transfer should not impact the competitive environment in the State; and (2) any adverse consequences resulting from the Proposed Transfer should not significantly impact MCI Communications' customers due to the existence of competition in the State's telecommunications market.

The commission also finds that the Consumer Advocate's recommendation that MCI Network should be required to notify its current customers of the change in service provider as a result of the Proposed Transfer to be reasonable and appropriate, and consistent with commission rules, specifically HAR § 6-80-129(14).

Moreover, the commission finds that: (1) MCI Network and MCI Communications provide competitive local exchange services and are both non-dominant carriers in the State; and (2) competition, in this instance, will serve the same purpose as public interest regulation. Accordingly, to the extent that the Application is inconsistent with any of the filing requirements of HAR Chapter 6-61, including HAR § 6-61-105, a waiver of these filing requirements is reasonable and in the public interest.

Based on the foregoing, the commission concludes that the Proposed Transfer should be approved under HRS § 269-19. The Consumer Advocate's recommendation that MCI Network should be required to notify its customers of the proposed change in service provider as a result of the Proposed Transfer is reasonable and should be adopted. Moreover, to the extent that the Application is inconsistent with the filing requirements of HAR Chapter 6-61, the commission concludes that the applicability of those requirements, including HAR § 6-61-105, should be waived, pursuant to HRS § 269-16.9(e) and HAR § 6-61-135.

B.

COA Expansion

Under its current COA, MCI Communications has commission authority to provide telecommunications services in the State on a resold basis only. Accordingly, Applicant's request that MCI Communications' COA be expanded to allow it to provide facilities-based services, consistent with MCI Network's

COA, must be scrutinized under established regulatory requirements.

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a CPCN from the commission.<sup>11</sup> HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and
- (3) The proposed telecommunications service is, or will be, in the public interest.

HAR § 6-80-18(a).

Upon review, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Based on Applicant's representation that the same management team, support personnel, and technicians that currently manage MCI Networks' facilities will continue to manage the facilities under MCI Communications, and given that MCI Communications currently provides telecommunications in the State under its existing COA, MCI Communications possesses

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<sup>11</sup>On June 3, 1996, HAR Chapter 6-80 took effect. HAR Chapter 6-80, among other things, replaced the CPCN with a COA for telecommunications carriers, and established procedures for requesting and issuing a COA.

sufficient technical, financial, and managerial resources and abilities to provide the expanded service.

2. As a current authorized provider of telecommunications services in the State under its existing COA, MCI Communications is currently required to conform to the terms, conditions, and rules prescribed or adopted by the commission. Upon receipt of its expanded authority to also provide facilities-based services, MCI Communications will continue to be required to conform to applicable terms, conditions and rules of the commission. Additionally, through continued support from Applicant and based on Applicant's representations, MCI Communications is fit, willing, and able to properly perform the expanded telecommunications services, as proposed, and conform to the terms, conditions, and rules prescribed or adopted by the commission.

3. Expansion of MCI Communications' COA to provide facilities-based services is in the public interest. The commission recognizes that allowing additional facilities-based service providers to enter the market increases competition in Hawaii, providing customers with added telecommunications options at competitive terms and rates.

Based on the foregoing, the commission concludes that MCI Communications' COA should be expanded to allow it to provide telecommunications services in the State as a reseller and facilities-based carrier.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The Proposed Transfer, described in Applicant's Application filed on September 29, 2005, is approved, pursuant to HRS § 269-19. To the extent that the Application is inconsistent with any of the filing requirements of HAR Chapter 6-61, the applicability of those requirements, including those of HAR § 6-61-105, are waived, pursuant to HRS § 269-16.9(e) and HAR § 6-61-135.

2. MCI Network shall notify its customers of the change in service provider resulting from the Proposed Transfer consistent with HAR § 6-80-129(14).

3. MCI Communications' COA is expanded to allow it to provide telecommunications services in the State as a reseller and facilities-based carrier.

(a) Under its expanded COA, MCI Communications shall continue to be subject to all applicable provisions of HRS Chapter 269, HAR Chapter 6-80, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

(b) MCI Communications shall continue to file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. MCI Communications' tariffs shall comply with the provisions of HAR Chapter 6-80. In the event of a conflict


between any tariff provision and State law, State law shall prevail.

- (c) MCI Communications shall conform its existing tariff to reflect its expanded service and to the provisions of HAR Chapters 6-80, as applicable. An original and eight (8) copies of MCI Communications' revised tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate, as applicable. MCI Communications shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

4. Failure to comply with the requirements set forth above, may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

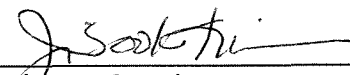
DONE at Honolulu, Hawaii December 29, 2005.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel  
05-0246.ac

By   
Janet E. Kawelo, Commissioner

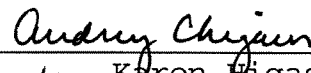
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22202 upon the following Petitioners, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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for Karen Higashi

DATED: December 29, 2005